

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	
LAMONT WINN and)	Bankruptcy Case No. 97-32749
FREIDA WINN,)	
)	
Debtors.)	
)	
CARL TUCKER and)	
DEBORAH TUCKER,)	
)	
Plaintiffs,)	
)	
vs.)	Adversary Case No. 97-3378
)	
LAMONT WINN,)	
)	
Defendant.)	

OPINION

The issues before the Court are twofold: (1) whether the Defendant obtained money from the Plaintiffs through fraud and false pretense so as to render a debt non-dischargeable, pursuant to 11 U.S.C. § 523(a)(2)(A), and (2) whether the Defendant's actions also render the same debt non-dischargeable as a conversion, pursuant to 11 U.S.C. § 523(a)(6).

Findings of Fact

1. The Plaintiffs and Defendant entered into a contract, on January 5, 1996, which provided that the Defendant, a contractor, would supply labor and materials to remodel Plaintiffs' building.
2. The Plaintiffs paid the Defendant \$16,500 for the project.
3. The Defendant accepted the payments of \$16,500 from the Plaintiffs, but did not do the work required by the contract.

Conclusions of Law

Under 11 U.S.C. § 523(a)(6), a debtor is denied a discharge as to debts which arise from willful and malicious injury caused by the debtor to another entity or to the property of another entity. The plaintiff

must prove that (1) there was a willful and malicious act on the part of the debtor (2) done without cause or excuse (3) which leads to harm to another entity or property of another entity. In re Hallahan, 78 B.R. 547, 550 (Bankr. C.D. Ill. 1987). While there is not universally accepted definition of the terms "willful and malicious," the majority of courts have concluded that willful and malicious conduct is a deliberate or intentional act of a debtor having knowledge that the act could harm another. In re Roemer, 76 B.R. 126 (Bankr. S.D. Ill. 1987); In re Hallahan, *supra*, at 550; In re Nelson, 35 B.R. 766 (Bankr. N.D. Ill. 1983). The term "malicious" has been defined as a wrongful act done consciously and knowingly in the absence of just cause or excuse. In re Bossard, 74 B.R. 730 (Bankr. N.D. N.Y. 1987); In re Conduct, 71 B.R. 485 (Bankr. N.D. Ill. 1987). It is not necessary for the debtor to act with ill will or malevolence toward the injured party. Hallahan, *supra*, at 550. In re Gaebler, 88 B.R. 62 (Bankr. E.D. Pa. 1988).

Under 11 U.S.C. § 523(a)(2)(A), the debtor may not be discharged "from any debt . . . to the extent obtained by . . . false pretenses, a false representation, or actual fraud . . ." In order to establish non-dischargeability under this section, the creditor must prove, by a preponderance of the evidence that: (1) the debtor made a statement either knowing it to be false or with reckless disregard for the truth; (2) the debtor possessed an actual intent to deceive the creditor; and (3) the creditor justifiably relied upon the misrepresentation. In re Mayer, 51 F.3d 670 (7th Cir. 1995); In re Maurice, 21 F.3d 767, 774 (7th Cir. 1994); In re Scarlata, 979 F.2d 521, 525 (7th Cir. 1992); In re Kimzey, 761 F.2d 421, 423 (7th Cir. 1985).

Both the Plaintiffs/building owners and the Defendant/contractor testified at trial on May 4, 1998. The Plaintiffs testified that they had entered the contract with the Defendant, that they paid the Defendant \$16,500, and that the Defendant did not do the work. The Defendant testified that he had entered the contract with the Plaintiffs, received the payments totalling \$16,500, but insisted that he had done some of the work he had contracted to do. The Court found both Plaintiffs, husband and wife, to be credible witnesses in support of their Complaint. Their credibility was established through their demeanor, appearance, what they said, how they said it, and how their testimony related to the other evidence in the case and the testimony of the Defendant/contractor. On the other hand, the Defendant was not a credible

witness, and the documents he sought to enter into evidence failed to support his testimony.

The Court finds that the Plaintiffs proved, by a preponderance of the evidence, each and every essential element of 11 U.S.C. §§ 523(a)(6) and 523(a)(2)(A). Those sections do not provide for attorney fees. For the foregoing reasons, the Complaint to Determine Dischargeability of debt is allowed, and the Debtors' debt of \$16,500 is non-dischargeable.

This Opinion is to serve as findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

ENTERED: May 7, 1998

/s/ Gerald D. Fines
United States Bankruptcy Judge